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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Marriage of SUSAN and ADAM
DAVIS.

2d Civil No. B203268
(Super. Ct. No. SD 022 859)
(Ventura County)

SUSAN VIVLAMORE DAVIS,

Respondent,

v.

ADAM DAVIS,

Appellant.

Adam Davis appeals an order of the family law court requiring him to pay \$8,000 attorney's fees incurred by his former wife, Susan Vivlamore Davis, in response to his motion to modify child support.¹ We affirm.

FACTS AND PROCEDURAL HISTORY

On December 7, 1999, Susan filed a petition to dissolve her marriage to Adam. The couple have a minor daughter. On June 27, 2000, the family law court granted a judgment dissolving the marriage and incorporating a marital settlement agreement.

¹ We shall refer to the parties as "Adam" and "Susan," not from disrespect, but to ease the reader's task.

On February 13, 2007, Adam filed a motion in propria persona to modify child support, which included a financial statement. He later filed an income and expense declaration. Susan filed responsive declarations.

On August 7, 2007, Susan's attorney filed an "Updated Declaration" of attorney's fees and costs regarding the modification motion. The attorney stated that Susan incurred attorney's fees by deposing Adam and his current wife in Bakersfield. The attorney also provided detailed billings in support of the fee request. The fees amounted to \$12,207, and did not include the cost of a deposition transcript.

At the August 8, 2007 hearing, Susan requested an award of attorney's fees as sanctions for Adam's failure to produce joint tax returns, bank records, and credit card records, despite two formal requests. Adam responded that he provided "Schedule C" of his tax returns, but for reasons of "[his] wife's privacy" did not provide the additional financial information. Susan replied that the financial records were important because Adam and his wife are self-employed and "commingle their commissions."

The family law court denied the modification motion because Adam "failed to produce sufficient economic proof." The family law judge stated: "I think the law is pretty clear that if you want to modify something, you've got to be transparent in your economic dealings so that the court can make an informed decision about what the economic situation is And it looks like you've done just about everything you could not to do that." It then awarded Susan "\$8,000 as Attorneys Fees and Sanctions" payable at \$1,000 monthly.

Adam appeals and challenges the award of fees to Susan. Susan has not filed a responsive brief.

DISCUSSION

Adam argues that the family law court abused its discretion by ordering payment of \$8,000 attorney's fees because his income and expense statement reflects no net disposable income. (*In re Marriage of Keech* (1999) 75 Cal.App.4th 860, 867 [court abuses its discretion by ordering party to pay other party's attorney's fees without considering payor's ability to pay].) He also contends that the court abused its discretion

by awarding the attorney's fees as a sanction pursuant to Family Code section 271.² Adam points out that section 271 requires the court to consider the parties' income, assets, and liabilities, among other things. He adds that his income and expense declaration is sufficient to establish his monthly income.

Our review is constrained to the limited appellate record Adam has provided; the record does not contain Susan's income and expense declarations or the other written responses to Adam's modification motion. (*Null v. City of Los Angeles* (1988) 206 Cal.App.3d 1528, 1532 [appellant must establish error with an adequate appellate record].)

Section 271, subdivision (a) provides: "[T]he court may base an award of attorney's fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the laws to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys. An award of attorney's fees and costs pursuant to this section is in the nature of a sanction. In making an award pursuant to this section, the court shall take into consideration all evidence concerning the parties' incomes, assets, and liabilities. The court shall not impose a sanction pursuant to this section that imposes an unreasonable financial burden on the party against whom the sanction is imposed. . . ."

We review a sanction order imposed pursuant to section 271 for an abuse of discretion. (*In re Marriage of Feldman* (2007) 153 Cal.App.4th 1470, 1478.) In this analysis we view the evidence and draw all reasonable inferences therefrom in favor of the trial court's order. (*Ibid.*) Moreover, the trial court is not required to issue a written order or a statement of decision after imposing sanctions pursuant to section 271. (*Feldman*, at p. 1497; *In re Marriage of Quay* (1993) 18 Cal.App.4th 961, 970.)

Here the trial court's comments reveal that Adam's withholding of financial records impaired Susan's defense to the motion to modify child support and increased the cost of litigation ("[T]hey've ex[p]ended a significant amount of money to get what . . .

² All further statutory references are to the Family Code.

they're entitled to under the law"). The trial court had evidence of each party's income and expense declarations, including evidence that Adam incurred approximately \$23,700 in vehicle expenses and \$15,600 in travel expenses in 2005. We presume the trial court considered the declarations as required by section 271. (*People v. Scott* (1997) 15 Cal.4th 1188, 1221 [presumption that trial court properly follows established law].) Adam may not withhold his financial records and now complain that the limited information he has produced does not support the trial court's order.

The order is affirmed. Each party is to bear his or her own costs.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Charles W. Campbell, Judge
Superior Court County of Ventura

Adam Davis, in pro. per., for Appellant.

No appearance for Respondent.